

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STEVE SACHS, ET AL.,)	
Plaintiff)	
)	
v.)	CIVIL ACTION NO. 04-30032-MAP
)	
STEVEN SPRAGUE, ET AL.,)	
Defendants)	

ORDER REGARDING DEFENDANTS' MOTION TO DISMISS
(Docket No. 29)

September 26, 2005

PONSOR, D.J.

This is a derivative action brought by shareholders of Wave Systems Corp. ("Wave" or the "Company") on behalf of the Company against certain of its officers and directors for, among other things, breaching their fiduciary duties by disseminating, or permitting the dissemination of, false and/or misleading statements regarding the Company's condition and prospects. Citing Fed. R. Civ. P. 23.1, all defendants have moved to dismiss plaintiffs' verified consolidated amended complaint ("amended complaint") on the grounds that plaintiffs neither made a pre-suit demand upon Wave's Board nor demonstrated why a demand would have been futile.

The motion is hereby ALLOWED. It is undisputed that no pre-trial demand was made by plaintiffs; furthermore, the plaintiffs have not offered facts which would excuse this failure based on futility. A memorandum will issue shortly setting forth in detail the court's reasons for reaching this conclusion, and no judgment will enter pending issuance of this memorandum. In summary, however, the court finds that the plaintiffs have failed to allege particular facts that are sufficient to create a reasonable doubt as to whether the Company's Board could have exercised independent judgment in response to a pre-suit demand.

This order will apprise counsel of the court's ruling and of its intention, once the memorandum detailing its reasoning issues, to direct entry of judgment for defendants on all counts in this case.

It is So Ordered.

/s/ Michael A. Ponsor
Michael A. Ponsor
U.S. District Judge